EXPLANATION OF

25

فروع الفقه

Ibn Al-Mibrad

Shaykh Ahmad Musā Jibrīl

May Allāh (سبحانه وتعالى) ease the affairs of the Shaykh, preserve him, love him, and safeguard him from all harm. May He (سبحانه وتعالى) keep him sincere, and continue to shower his life and Da'wah with His blessings, and allow the Muslims to benefit from his da'wah until the Day of Judgement. May Allāh make all his efforts weigh heavy on his scales, and make it an immense Sadaqah Jāriyah for him, his parents, and his family. May Allāh facilitate the completion of this Sharh and shower him with His aid always and forever.

SH_AHMAD_JIBRIL

SH_AHMAD_JIBRIL

T.ME/AHMAD_MUSA_JIBRIL

SHAYKH AHMAD MUSĀ JIBRĪL

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بسم الله الرحمن الرحيم

الحمد لله رب العالمين، والعاقبة للمتقين، والصلاة والسلام على عبده ورسوله وخليله وصفوته من خلقه، نبينا وإمامنا وسيدنا محمد، وعلى آله واصحابه ومن سلك سبيله واهتدى بهداه الى يوم الدين، اما بعد:

Recap

We're on the nullifiers of Wudū'. And the author said,

والنواقض في الطهارة الصغرى ثمانية

There are 8 nullifiers of Wudū'. The first one is الخارج من السبيلين, anything that exists from the two private parts. Then, second nullifier of Wudū' is والفاحش من غيرهما, what's repulsive that exits from other than the two private parts. The third nullifier of Wudū' is وزوال العقل بغير نوم يسير جالسا أو قائما, loss of consciousness nullifies Wudū', and similar to it — ruling-wise — is sleep, unless it's light sleep while the person is sitting or standing. That's the opinion of the author, but we explained and elaborated on that. The fourth nullifier of Wudū' is ومس الفرج, and that's what we began on last class. The first Mas'alah we took was about a male touching his sexual organ, touching the penis. We took that first Mas'alah.

II. The Mas'alah we'll start on today inshā'Allāh is a female, a woman, touching her sexual organ. Does it have the same Hukm as a man, or is it different? There are three opinions on this Mas'alah.

- The first opinion is the opinion of the Shāfi'īyyah and Hanābilah, one of three opinions of the Mālikiyyah, and it's the opinion Ibn Qudāmah selected in Al-Mughni. It's that it nullifies Wudū'. They used the Hadīth in Musnad Ahmad and also in Ad-Dāraqutni and Al-Bayhaqi:

عن عمرو بن شعيب، عن أبيه، عن جده، قال: قال رسول الله (ﷺ): أيما رجل مس فرجه فليتوضأ وأيما امرأة مست فرجها فلتتوضأ

"Any man who touches his private part must make Wudū', and any woman who touches her private organ must make Wudū'." At-Tirmidhi رحمه الله said that Al-Bukhāri رحمه الله said that that Hadīth is authentic. Adh-Dhahabi said it's authentic, and Ibn Hajr stated that it was Hasan. They also used some other weak Ahādīth. There is no need to go over them.

- The second opinion is that a woman touching her sexual organ does not nullify the Wudū'. This is the opinion mainly of the Hanafiyyah, a second opinion of the Mālikiyyah and it's the main opinion of their Madhhab, and it's also a second opinion of the Hanābilah. So mainly it's the Hanafiyyah who adopted this opinion, with a second opinion for both Mālikiyyah and

Hanābilah. They use the rationale that we mentioned several times for several purposes, and we'll mention it again and again inshā'Allāh. And here Ibn Qudāmah mentioned it, he said, "The origin is that Tahārah is established, and when Tahārah is established, it remains valid, unless there is clear proof — a solid, authentic proof or Ijmā' for a nullifier — and here there is no solid proof on that because all the proofs are disputed."

They also said the Hadīth ordered Wudū' was for men and it's due to the possibility of a discharge, unlike a woman. It's different than a woman. And the answer to that is that stipulation that it's due to a discharge has no proof to back it up. The Wudū' is not due to a discharge. If it was so we would say touching the private part does not nullify Wudū' *unless* there's a discharge. The Hadīth is for simply touching without the stipulation of desire or a stipulation of discharge.

The third Hadīth they use is Hadīth Talq Ibn 'Ali, and they said touching the private part doesn't require Wudū'. They compared woman to a man. And we said that Hadīth is weak.

- Then you have the opinion that some Mālikiyyah said it nullifies the Wudū' (a woman touching her sexual organ nullifies the Wudū') if she touches it with desire.

Ar-Rājih

The selected opinion is that women touching their sexual organ nullifies Wudū' because it was established for men, as we mentioned, and the ruling applies to women just as much. Because,

إنما النساء شقائق الرجال

"Women are of the same nature as men." Matters like these, the ruling pertaining to men apply to women, unless there is proof to show they're different. It's also strengthened by analogy, as it appears there is no difference between a man and a woman, and also, the Hadīth of 'Amr Ibn Shu'ayb.

So, last week we took a man touching his private part, then we started off today with a woman touching her sexual organ.

III. The third Mas'alah under ومس الفرج is if a spouse touches the private part of another spouse — the husband touching the private part of his wife, or the wife touching the private part of her husband. What also falls under this Mas'alah, to keep in mind, is something like a parent or caretaker touching the private part of the infant or child while they're cleaning them or changing their diaper or bathing them, and like that is someone who may work in a facility like a nursing home where it's urgent to do something like that.

- So, the first opinion is that it doesn't nullify the Wudū'. That's the opinion of the Hanafiyyah and Dhāhiriyyah. They said the rationale that we mentioned — once Tahārah is established, it doesn't get nullified without an Ijmā' or solid proof, and here there is no proof that indicate that the Wudū' is nullified.

  They also used as proof the Hadīth of Talq Ibn 'Ali, that touching one own's private part doesn't nullify Wudū', they said the same about touching someone else's — but we said that Hadīth is weak.

  Third of all, they said the Ahādīth ordering Wudū' from touching the private part, like Hadīth Busra Bint Safwān, they said *if* we're going to use them, they're about a person touching their *own* private parts, not touching someone else's private part.

  And then they also used — which is the fourth proof that they used — also a weak Hadīth. There is no need to mention it, but I'll mention it because it's popular in other contexts and is used by the enemies of Allāh, some of the enemies of Allāh. They said,

كنا عند النبيِّ صلَّى اللهُ عليهِ وسلَّمَ فجاءِ الحسنُ فأقبل يتمرَّغُ عليه فرفعَ عن قميصَه وقبَّل زَبيبتَه

That the Messenger (ﷺ) lifted the shirt of Al-Hasan and kissed the private part of Al-Hasan. Some of the enemies of Allāh use it for certain matters, and that has four narrations to it, all of them are weak. So, you need to keep in mind that it's a weak Hadīth. The reason I mentioned it is to know that it's a weak Hadīth.

- The second opinion is that touching the private part of someone else nullifies the Wudū'. That is the opinion of the Shāfi'īyyah and the Hanābilah. They used Hadīth Busra Bint Safwān, but they used a different narration of it, that she heard the Messenger (ﷺ) ordering Wudū' from touching the private part.

سمعت رسول الله صلى الله عليه وسلم يأمر بالوضوء من مس الفرج

Note, this narration of Hadīth Busra is worded slightly different. The narration of this Hadīth that we took ordered Wudū' from one touching his own private parts, that's what we took in our last class. Here, in this narration, it's worded as "from touching private parts", not limited to touching your own private part — touching *a* private part. And this narration here is Shādh, it's weak. It's Shādh, and Shādh is a narration of a trustworthy person that contradicts the narration of a person or people who are more reliable. The correct, authentic of narration Hadīth Busra is the one we took last week, or last class:

مَنْ مَسَّ ذَكَرَهُ فَلْيَتَوَضَّأْ

The second proof they used is what Ibn Qudāmah said, he gave the rationale in support of this. He said, if one's Wudū' is nullified when he touches his own sexual organ — [meaning] he needs to do Wudū', while at times there is need that arises where a person needs to touch their own sexual organ — they said it's Awlā and prioritized that touching someone else's private part nullifies that person's Wudū'. And the answer to that is that this is a matter of Ta'abbud. The Illah or reasoning for nullifying Wudū' is that it's a matter of 'Ibādah. Many matters of 'Ibādah we can't explain. We do it as an 'Ibādah without the need of rationales or stating that it's because of discharge or that it's because of desire. It's a matter of 'Ibādah, we do it because we're ordered, just like we do the Maghrib three Rak'āt and the Isha' four Rak'āt.

- The third opinion is that touching someone else's private part nullifies the Wudū' of the person who touched, and it's only if it's with desire. This is one of the opinions of the Mālikiyyah.

Ar-Rājih

The Ar-Rājih is that it doesn't nullify the Wudū' except when one touches their own private parts, because it is a matter of 'Ibādah and that is how the Hadīth is worded: مَنْ مَسَّ ذَكَرَهُ — his own private part — فَلْيَتَوَضَّأْ. It states touching

one's *own* private part. The other narration that's broad — touching *a* private part — is, as we said, weak. And if that applies to a wife touching her husband or a husband touching the wife — the adults, like I said, it applies to touching children while cleaning them or changing their diaper or bathing them, likewise someone who urgently needs to do so, like caretakers in nursing home facilities.

IV. The next Mas'alah — that [the previous Mas'alah] is for touching someone else's private part, the person who's touching — now the Mas'alah is the person who was touched. Ibn Taymiyyah رحمه الله related that there is an Ijmā' that one who's private, sexual organ is touched, his Wudū' is not nullified. The point that it is not a nullifier of Wudū' is correct, but the Ijmā' may not be fully accurate, because some Mālikiyyah mentioned in an opinion that one whose sexual organ is touched in desire by someone else, that their Wudū' gets nullified. The opinion of Ibn Taymiyyah رحمه الله تعالى that it doesn't nullify is correct, and it's correct because the Hadīth on touching is not about the one being touched. We don't go beyond the proof in the matter of 'Ibādah. The proof doesn't mention another person being touched and that that other person's Wudū' gets nullified, so we stick to the Hadīth. The Hadīth is worded about one touching his own sexual organ, and we stick to that. It's an 'Ibādah matter and we stick to the clear wording of the proof. This, of course, has nothing to do with the matter that if there is a discharge. That's a totally different topic if there is a discharge, and of course that if there is a discharge, that nullifies Wudū'. But that's not the issue at hand right now.

V. Another Mas'alah is what about touching the buttocks? And when we mention the buttocks, we're talking about specifically the rectum.

- The first opinion is that it doesn't nullify the Wudū'. That's the opinion of the Hanafiyyah, the Mālikiyyah, Dhāhiriyyah, and one of the opinions of the Hanābilah. They used Hadīth Talq Ibn 'Ali, the one where the Messenger supposedly said it's only a part of you, like any part of your body. And they said the buttocks are like the sexual organ, that you don't have to make Wudū' from either. We said the Hadīth is weak.

  The second and more important proof is, they said the order to do Wudū' was touching the male sexual organ الذَكَرَ (the penis), not the rear. And the origin is that Tahārah remains intact and doesn't get nullified unless there is clear, authentic solid proof, and there is no proof to include the rectum.

- The second opinion is that they said it nullifies the Wudū'. That's the opinion of the Shāfi'īyyah and the Hanābilah, and it's the opinion Ash-Shawkāni رحمه الله chose. They used the Hadīth that we mentioned earlier:

أيما رجل مس فرجه فليتوضأ وأيما امرأة مست فرجها فلتتوضأ

The term used in the Hadīth, that a person must make Wudū' — فرج — they said it encompasses the rectum and it encompasses the male and female sexual organ.

Ar-Rājih

The first opinion is more correct, that it doesn't nullify the Wudū'. The Hadīth the second opinion used, that فرج includes both private parts, is more correctly defined as a male or female sexual organ — not the bottom, not the rectum. Keep in mind, this Mas'alah, this dispute, pertains to touching the rectum, not the buttocks. The buttocks themselves, touching them doesn't nullify a Wudū'. There is no dispute on that, it doesn't nullify Wudū'. The dispute here is pertaining to the rectum.

VI. The final Mas'alah for today is touching the testicles. Touching the testicles doesn't nullify the Wudū' according to all four Imāms. Why? Because there is no proof for it. The only alleged opinion I know of is an opinion attributed to 'Urwā Ibn Zubayr because of a Hadīth, and the Hadīth is in Ad-Dāraqutni. The Hadīth is related by Busra, that she heard the Messenger (ﷺ) said:

من مس ذكره أو أنثييه أو رفغيه فليتوضأ وضوءه للصلاة

That Hadīth is related by Busra, and it specified that one must make Wudū' when touching the testicles. An-Nawawi said it's fabricated, and Ad-Dāraqutni said the addition of 'testicles' is worded from the wording of 'Urwā, not from the statement of the Messenger (ﷺ). In a different narration, 'Urwā رضي الله عنه mentioned touching the sexual organ nullifies Wudū', and he attributed that to the Messenger. Separately — in that narration — separately and clearly from his own wording, he added the testicles. That one, Ad-Dāraqutni said was authentic.

So the bottom line is, because there is no proof — just like we said about the rectum — because there is no proof, we say that touching the rectum or the testicles doesn't nullify the Wudū', because it is a matter a 'Ibādah and there's no proof that indicates that touching them nullifies the Wudū'.

Let's take a recap on what we took, because we took many Masā'il. We took the Mas'alah of a man touching his sexual organ, we stated that that nullifies the Wudū'. We took the Mas'alah of a woman touching her sexual organ, we said that nullifies the Wudū'. A male or female who touch their sexual organ *without* a barrier, meaning it's not over the clothes, need to make Wudū', meaning it nullifies the Wudū' — whether it's with desire or not, whether there is discharge or not. Touching itself, bare touching, is sufficient to nullify Wudhu. The third Mas'alah is a spouse touching the private part of their spouse, a husband touching the wife or the wife touching the husband's private part. We said that does not nullify the Wudū' of the one touching. The fourth Mas'alah is the one being touched. We said the Rājih is that one being touched, their Wudū' is

not nullified, for lack of proof on these matters. And the fifth Mas'alah is touching the rectum, we said it doesn't nullify Wudū', because it is a matter of 'Ibādah, we need proof on it, and there isn't any. The sixth Mas'alah is touching the testicles and we said that also doesn't nullify Wudū', because there is no proof — clear, authentic proof — to specify that that nullifies the Wudū'.

And with this we'll conclude.

وصلى الله على سيدنا محمد وعلى آله وصحبه وسلم